National Sheep Association

NSA guide to the Agriculture Bill
A summary and briefing for NSA members in relation to sheep farming

What is the Agricultural Bill?

The Agricultural Bill, once passed, will be a new act of parliament (primary legislation) and the baseline structure for agriculture following the UK's withdrawal from the European Union on the 29th March 2019. It is available to read here.

The Agricultural Bill (2017-19) was introduced to Parliament on 12th September 2018. It will now go through the lengthy process of scrutiny and discussion in parliament, with a view to passing into law as close to 29th March as possible.

Timeline

- **First reading** – 12th September 2018 – Bill presented to parliament but not debated.
- **Second reading** – 10th October 2018 – Opportunity for MPs to discuss the Bill in its current form, giving an idea of what amendments might be proposed
- **Public Bill Committee** – MPs with an interest in the Bill and/or agriculture will scrutinise it and propose amendments to close any loopholes or make changes. This stage could be done as a 'Committee of the Whole House', this means rather than a committee that sits privately, it would be conducted in the House of Commons.
- **Third reading** – The Bill will return to the Commons who will then vote to accept or reject proposed amendments.
- **House of Lords** – Once it is agreed, the Bill will cross over to the House of Lords for them to follow the same process. If the Lords make changes, it will return to the House of Commons and this process will continue until both Houses agree.
- **Royal Assent** – The Queen will sign the Bill and it will become an Act of Parliament. Once agreed, any further changes will have to be through secondary legislation.

What will the Bill (if passed without amend) say?

- Powers for the Government to provide financial assistance and move towards a new farm payment system based on paying public money for public goods. This will replace BPS.
- Powers to give financial assistance for access to capital grants and loans for productivity outcomes.
- The ability to establish an enforcement and inspection regime for the new financial assistance payments including powers to set out terms and conditions of future financial assistance.
- Measures to continue making payments to farmers during a transition period with powers to simplify and phase out direct payments and to delink these payments from the land. This includes setting the agricultural transition period for England.

- The ability to modify elements of the retained CAP regulations that set out the finance, control and reporting regime that applies across the CAP.
- Powers for the Government to collect and share data from those within or closely connected to the agri-food supply chain.
- Provisions to intervene in exceptional market conditions.
- Powers to make regulations setting and amending marketing standards for agricultural products and to make provision about the classification of carcases by slaughterhouses.
- Provisions to create a domestic system of recognition of Producer Organisations (POs) to encourage collaboration amongst growers.
- Provisions for the Secretary of State to make regulations imposing obligations on first purchasers of agricultural products in relation to contracts with producers. This is aimed at protecting producers and consumers from unfair trading practices.
- Powers for the Secretary of State to legislate for the UK to comply with the World Trade Organisation (WTO) Agreement on Agriculture (AoA).
- Provisions for Wales and Northern Ireland, where this Bill will legislate for similar powers adapted for the Welsh Government and Department for Agriculture, Environment and Rural Affairs in Northern Ireland (DAERA), to be exercised by Ministers in those territories.

What does 'public money for public goods' mean?

Public money for public goods means the Government will reward money to farmers/land managers who provide certain outcomes that the Government specify as being in the public interest. The definition of a public good is, loosely, something that benefits society more generally, not just an individual.

The list set out in the Bill includes:-

- Environmental protection.
- Public access to the countryside.
- Measures to reduce flooding.
- Increased animal welfare.
- Measures to reduce climate change.

The list will be longer/more details once the Bill has been passed, as Defra will expand on it ready for release in advance of farmers moving into a new system.

What is the transition period?

The Bill sets out a seven-year time frame for the transferring from BPS to the new 'Environmental Land Management Scheme' (ELMS).

In 2019/20, BPS will continue to be paid mostly unchanged. The Bill does allow the Government the right to make changes to this, but if so they would be mostly minimal and in the interest of simplifying the current CAP and BPS requirements. In this time the Government will run trials for the new system.

From 2021 to 2027, BPS will be phased out and replaced by ELMS. The Bill will also give the power for this time to be extended if justifiably necessary.

What does this mean for direct payments?

Direct payments will continue in 2019/20 but changes will begin to be made during this time. This should not be noticeable to farmers but from 2021 the changes will be rolled out noticeably. Direct payments of any nature will be stopped and, by the end of 2027, will no longer be made in England.

The Bill gives the Government the power to end greening payments under the current BPS before the end of the withdrawal period.

What is ‘delinking’?

Delinking is a system the Government will be introducing through Basic Payment Scheme payments from 2019. The payments will be ‘delinked’ from the land and the money received can be directed elsewhere. The Bill also sets out the option for farmers to be offered their payment in a lump sum. This means the money could be used to help towards retirement, farm contingency plans or to help a young person into the industry. There would be no obligation for anyone receiving this payment to remain a farmer. The delinked payment will be a replacement of the BPS; it would not be possible to receive both BPS and a delinked payment.

Defra have yet to specify who is eligible for this option but the Bill specifies entitlement to delinked payments may be defined by whether an individual was entitled to payment under the Basic Payment Scheme during a reference period, of one or more years, prior to the introduction of delinking. The monies paid through the delinked payment will be based on BPS.

What does this mean for CAP regulations?

Many farming regulations from the Common Agricultural Policy were brought across in Primary Legislation through the EU (Withdrawal) Bill (also known as the Great Repeal Bill). The Agricultural Bill will introduce powers to make changes to these through secondary legislation. This may be referred to as the ‘horizontal basic act’ during this period as it refers to the ‘pillars’ from the CAP.

The Agricultural Bill specifies that changes cannot be made to these regulations under pillar one of the CAP, unless they will simplify the process. It also specifies that time periods set under the CAP and transferred into UK law by the EU (Withdrawal) Bill, cannot be extended beyond those already set.

However, the Bill will give the Government the power to modify retained EU regulation where it related to Rural Development Schemes under pillar two of the CAP. These powers can only be used to remove or simplify a process. This is intended to give more flexibility to projects and to simplify the bureaucracy currently involved.

What do new data collection powers mean?

The Bill sets out the power for the Government to collect data from those involved in the agri-food supply chain, including food producers. The data collected and shared under these provisions is intended to help farmers and producers increase productivity, help producers to manage risk and market volatility, and support animal and plant health and traceability.

Data can only be collected where it is relevant to the agri-food process. The Bill specifies this only applies to producers in England unless an agreement is formed with other devolved Governments.

‘Agrifood supply chain’ may also be referred to as ‘farm to fork’.

The intention is to increase transparency within the food chain and draw out bad practice at all levels. This includes issues such as animal welfare, labelling and environmental damage.

What does ‘provisions to intervene’ mean?

These powers allow for the Secretary of State to declare a period of exceptional market conditions and to give financial assistance to support farmers who have been affected. They also would enable the Secretary of State to use the additional public intervention and private storage powers in retained EU legislation.

The Bill sets out that this could be done if there is a circumstance that means farmers will not be able to sustain their income without assistance, or there is a fall in price of one or more agricultural products, regardless of the nature of the circumstances that caused it. The Bill specifies this must only be exceptional and cannot be used for regular market fluctuations. Defra is expected to provide more clarification on this as the Bill is debated in Parliament.

If enacted this power would last three months from the specified date it began, and the Government would have the right to revoke the intervention at any time. If the specified three months was not an adequate time, the Government could extend a further three months, and would have to do so in the last week of the original time. The Government could also start a new exceptional intervention on the same issue.

The Government will be able to use the following tools during an intervention:

- Payments or loans under any conditions the Secretary of State considers appropriate.
- Targeting payments to particular sectors and geographical areas.
- Public intervention.
- Private storage aid powers.

These would be designed to address issues in the domestic market and not European.

What does the Bill say about marketing standards and carcase classification?

The Bill will give the Secretary of State the power to make the decisions regarding marketing standards for products marketed in England and carcase classification by slaughterhouses in England. The current EU legislation will be brought across through the EU (Withdrawal) Bill and the Agricultural Bill specifies there is no immediate plan to make changes (although it reserves the right to do so).

What does the Bill say about fairness in the supply chain?

The Bill recognises the supply chain is broader at the farm end and becomes more concentrated the further up the process. It recognises this can cause disparity in the supply chain, and that there are often few protections in place for the producers. The Bill will allow the Government the power to make regulations to introduce obligations that promote fair contractual relationships between farmers and the first purchasers of their products. As the issues faced by different farming sectors vary considerably, the Bill includes powers to introduce sector-specific regulation as well as a general industry code. The Bill suggests this is something that may be regulated by RPA, but at this point more work needs to be done to establish this.

What does the Bill say about WTO agreements?

The Bill gives the Government the authority to act to ensure the UK meets WTO Agreement on Agriculture (AoA) standards on disciplines on domestic support, market access and export subsidies. The UK is a member of the WTO in its own right but will be leaving the EU’s membership of WTO. This will amount to no change as the conditions for EU and UK membership to WTO are the same.

The new payments scheme set by the UK Government will have to comply to WTO standards. The WTO has three classifications:-

- Green Box: Measures that have no, or at most minimal, trade-distorting effects or effects on production. There is expectation that these payments must meet certain criteria but there is no limit on them.
- Amber Box: Payments assumed to cause trade distortion. The UK has a special provision within this to provide more than other countries, but it is still capped.
- Blue Box: Trade-distorting domestic support with 'production-limiting' conditions designed to reduce distortion. Under current WTO agreements, members are not required to limit such payments provided (for livestock) payments are made on a fixed number of heads.

The Agricultural Bill will allow the Government to set financial ceilings on the devolved administrations and England in relation to agricultural support that is considered trade distorting and classified as 'amber box' by the WTO. The Government will also be required to establish a decision-making process to ensure the new payments they establish fit WTO criteria.

A document must be submitted to the WTO yearly setting out what expenditure for farm payments is being allocated to what and where. This is currently handled by the EU but, following Brexit, the UK will have to provide its own. The Bill requires the devolved Governments to feed into the central Government to produce this document. The Bill also gives the Government the power to represent this document to the WTO, as other WTO members are able to question scrutinise other countries.

What does the Bill mean for Scotland, Wales and Northern Ireland?

The Government set out the Bill to be a framework for all countries in the UK. England is automatically included and the Secretary of State acts on behalf of England in the process. Wales has opted to be included in the basic framework with ability to make decisions on most matters independently within the realms of the Bill. Most parts of the Bill will apply to England and Wales only. Northern Ireland has opted in, with similar powers as Wales going to Daera until such a time as policy can be formed when an Assembly is returned. Scotland has chosen to opt out of the basic framework and will introduce its own Bill.

Wales: The Bill mostly extends the powers stated above (to the Government or Secretary of State) to the Welsh Ministers. The Welsh Government has chosen to be included in this Bill to ensure the continuation of payments to farmers and land managers once the UK leaves the EU. The powers granted in this Bill are intended to be time limited until a Welsh Agriculture Bill can be passed, at which time the provisions of such a Bill will supersede this Bill in Wales. The only limitation to the Welsh Ministers is that they are unable to modify aid schemes to fruit/veg POs.

Northern Ireland: The Bill largely extends the powers stated above (to the Government or Secretary of State) to Daera with the exception of:

- The agricultural transition period for England
- Powers to phase out direct payments and delink payments
- Powers to terminate direct payments
- Powers to modify aid schemes for fruit and vegetable POs

This is to enable Daera to continue to make payments to farmers and land managers after the UK leaves the EU and to ensure that future Executive Ministers have the flexibility to develop policy once an Assembly is returned.

Will this Bill supersede other legislation?

Some issues the Bill seeks to address require amendments to other pieces of primary legislation, through secondary legislation (e.g. changes to EU regulation that has been written into British law through the EU (withdrawal) Bill). Where this applies this Bill will have set the way for these changes to occur through Statutory Instruments where Government and relevant MPs can make these changes to be added on top of original Primary legislation.

Where this applies to the ‘provisions to intervene’ in exceptional circumstances the Bill specifies that it has the power to rush through the changes necessary to enable to Government to use the powers the Bill grants.

Can changes be made once the Bill is passed?

Once the Bill has been accepted by parliament and received Royal Assent, changes can be made through secondary legislation. This is known as a ‘Statutory instrument’.

In Ireland (once an Assembly is resumed) secondary legislation is how the Bill will be adapted for Northern Ireland.

September 2018